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No. 72

In the Supreme Court of the United States

OCTOBER TERM, 1946

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

A. L. MECHLING, INLAND WATERWAYS CORPORATION, THE SECRETARY OF AGRICULTURE, AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

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BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

The Secretary of Agriculture was a plaintiff in the court below and the United States the defendant. Inasmuch as their position was and is the same they are filing a single joint brief in this Court.

OPINIONS BELOW

The specially constituted district court wrote no opinion. Its findings of fact and conclusions

of law (R. 177–207) have not been reported. The report of the Interstate Commerce Commission (R. 10–49) appears at 262 I. C. C. 7.

JURISDICTION

The final decree of the district court was entered on November 26, 1945 (R. 207–209). The petition for appeal was filed and allowed on January 24, 1946 (R. 209–210, 214–215). The jurisdiction of the Court is invoked under Section 210 of the Judicial Code, 36 Stat. 1150, as amended by the Urgent Deficiences Act of October 22, 1913, 38 Stat. 208, 220 (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. 345). Probable jurisdiction was noted by this Court on April 29, 1946 (R. 228).

STATUTE INVOLVED

The relevant provisions of Part I of the Interstate Commerce Act are set forth in Appendix I, *infra*, pp. 84–86.

QUESTION PRESENTED

Whether the Interstate Commerce Commission, under the circumstances here involved, may lawfully prescribe and approve a relationship in rates under which Eastern railroads charge higher rates for transportation from Chicago to eastern destinations of grain shipped by water to Chicago from points of origin on the inland waterways system

than the rates charged by the railroads for transportation from Chicago to the same destinations of grain shipped by rail to Chicago from the same points of origin on the inland waterways system.

STATEMENT

For many years grain moving from Chicago by rail to eastern destinations has enjoyed "reshipping or proportional rates,"[1] lower than the corresponding local rates, regardless of the means by which the grain was brought to Chicago from the point of origin further west where the grain began its movement from farm to market.[2] The same

[1] This term designates rates which are applicable only when the transportation to which they relate is part of a through movement. In the absence of a "joint through rate" applicable from origin to ultimate destination, the through rate is derived by "combination" of "factors" for the intermediate distances. When such a factor is lower than the "local" rate applicable between the same points on traffic that has not had a prior movement or will not have a subsequent movement, it is called a "proportional" rate. Where, as here, the proportional rate involved applies not to the first, but to the subsequent stage of a through movement, it may be spoken of as a "reshipping" rate. As to these definitions, see *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 771; *Interstate Commerce Commission* v. *Inland Waterways Corporation*, 319 U. S. 671, 694; *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 539; *Grain Proportionals, Ex-Barge to Official Territory*, 248 I. C. C. 307, 315.

[2] Grain moved to Chicago by barge during the period from 1886 to 1907 when barge service was discontinued until restored in 1933. Not until 1939 did the railroads propose to eliminate the parity between the rates applicable to grain which had arrived at Chicago by barge and

rates were applied eastbound from Chicago whether the grain came to Chicago by rail, by lake vessel, or by barge.[3]

However, by 1939 the volume of grain traffic moving to Chicago by water had become so substantial[4] that the railroads thought it advisable to take measures to divert this traffic from the water carriers and recapture it for the rails.[5] Accord-

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that which had utilized other means of transportation to that city. *Grain Proportionals, Ex-Barge to Official Territory*, 262 I. C. C. 7, 20, R. 23; *Grain Proportionals, Ex-Barge to Official Territory*, 248 I. C. C. 307, 312.

[3] The terms "ex-rail," "ex-lake," and "ex-barge" are used to designate grain which has had an antecedent haul to the railheads of the Eastern railroads by rail, lake, or barge, respectively.

[4] Unlike many commodities, grain is peculiarly adapted to barge transportation. The growth in barge traffic, due to the advantage derived by the farmers from the lower rates for water transportation, has been significant. During the years 1935–1938, inclusive, one railroad transported from its most important barge shipping point to Chicago, 480, 802, 572, and 753 carloads of corn, respectively; whereas during the first eleven months of 1939, it transported only 44 carloads. Ex-barge grain received at Chicago in 1939 amounted to 17,076,000 bushels, as compared with 137,000 in 1933. *Grain Proportionals, Ex-Barge to Official Territory*, 246 I. C. C. 353, 361, 364, 383. For 1940, 1941, 1942, and the first 10 months of 1943, the inbound movements by barge amounted to 19,996,000; 17,697,000; 15,894,000 and 10,980,000 bushels, respectively. 262 I. C. C. at 41, R. 48.

[5] As the late Commissioner Eastman pointed out, the testimony offered by the railroads in support of the tariffs filed in 1939 showed that the schedules were proposed "with the hope that we could drive this business off the water and back onto the rails where it belongs." *Grain*

ingly, rate schedules were filed by the Eastern railroads,[6] to become effective October 15, 1939,[7] which would have increased the rates paid for transportation from Chicago to eastern destinations of grain moving to Chicago by barge, while making no change in the rates on ex-rail and ex-lake grain. This result was to have been achieved by restricting the "proportional" or "reshipping" rates so that they would no longer apply to ex-barge grain. Such grain would then have had to bear the much higher "local" rates between Chicago and its eastern destination.

Upon protests being made to the Interstate Commerce Commission by affected parties, the proposed schedules were suspended by the Commission for investigation. Only one witness testified in support of the new rates and he frankly told the Commission that the purpose of the eastern railroads in filing these tariffs was to assist their connecting western rail lines in driving grain traffic away from the boat and barge lines to the western railroads.[8]

Proportionals, Ex-Barge to Official Territory, 248 I. C. C. 307, 321.

[6] Baltimore & Ohio Railroad Company, New York Central Railroad Company, New York, Chicago and St. Louis Railroad Company, Pennsylvania Railroad Company, Erie Railroad Company and the Chesapeake & Ohio Railroad Company.

[7] Due to litigation, the proposed rates have never gone into effect.

[8] R. 195; see 248 I. C. C. at 321. That this was the sole objective of the railroads is also shown by several cir-

On July 31, 1941, Division 2 of the Commission (Commissioner Alldredge dissenting) found that the suspended schedules had not been shown to be unlawful.[9] *Grain Proportionals, Ex-Barge to Official Territory*, 246 I. C. C. 353. Upon reconsideration the Commission (Commissioners Eastman,[10] Alldredge, Porter, and Johnson dissenting) on December 1, 1941, reaffirmed that finding. *Grain Proportionals, Ex-Barge to Official Ter-*

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cumstances. The western railroads actively supported the proposal before the Commission (246 I. C. C. 364–365; 262 I. C. C. 9, 10; R. 13), although they would have received no part of the higher charges which the eastern railroads sought to apply to ex-barge grain. The witness offered by the eastern railroads made no claim that more service was afforded or that greater costs were incurred in the transportation of ex-barge grain than in the transportation of ex-rail grain. Moreover, it is clear that the eastern railroads were not seeking greater revenues, for, if they had been successful in driving the grain traffic from the water carriers to the western railroads, the eastern carriers would have transported the grain for the lower proportional rates applicable to ex-rail traffic instead of transporting the grain for the much higher local rates which they were attempting to make applicable to ex-barge grain.

[9] Division 2 also held that the proportional rates had never been applicable on ex-barge grain, for the reason that the antecedent water transportation was not subject to regulation by the Commission. 246 I. C. C. at 380–81. This principle would likewise have invalidated many ex-lake and other rates and led to a multitude of suits by carriers to collect undercharges; it was disavowed by the full Commission on rehearing. 248 I. C. C. at 309, 311–19.

[10] The late Commissioner Eastman in a vigorous dissenting opinion expressed the view that the proposed schedules violated Sections 2 and 3 of the Interstate Commerce Act, and possibly Section 1 as well. 248 I. C. C. 320–23.

ritory, 248 I. C. C. 307. The Commission's order was set aside in *Cargill, Inc.* v. *United States*, 44 F. Supp. 368 (N. D. Ill.), but upon appeal by the Interstate Commerce Commission the district court's judgment was reversed on June 14, 1943, in *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671.

Thereafter the Commission reopened the proceeding. The railroads took no steps to put the proposed schedules into effect. Instead, further hearing was held by the Commission for the purpose, among others, of receiving evidence on the question "of whether or not reshipping or proportional rates should be prescribed for interstate transportation by rail of ex-barge grain, in carloads, from Chicago and other related points of origin embraced in the instant proceeding to eastern destinations considered therein, and if so, to determine what would be reasonable and otherwise lawful proportional or reshipping rates for application on such traffic." (262 I. C. C. 9, R. 12.)

On February 13, 1945, the Commission made the report and order here under review.[11] *Grain Proportionals, Ex-Barge to Official Territory*, 262 I. C. C. 7, R. 10–49. Reversing its previously expressed views that the proposed schedules had not been shown to be unlawful (246 I. C. C. at 381; 248 I. C. C. at 311), the Commission upon

[11] The order of February 13, 1945, incorporates by reference the prior reports of July 31, 1941, and December 1, 1941.

the amplified record decided to order that the proposed schedules be cancelled.[12] No controversy exists on this appeal with respect to this aspect of the Commission's order.

But the Commission went on to prescribe and approve a relationship between proportional rates on ex-barge grain from Chicago to eastern destinations and proportional rates on ex-rail and ex-lake grain moving from Chicago to the same destinations. Under this relationship the proportional rates on ex-barge grain, though less than the local rates for transportation of grain, would be higher than the proportional rates on ex-rail grain originating at the same points on the inland waterways system (262 I. C. C. 32, R. 36; see, also, Appendix A, Table II, 262 I. C. C. 39, R. 43). The eastern railroads promptly published tariffs,[13] naming proportional

[12] 262 I. C. C. at 33, R. 37. The Commission found that "The record as amplified on further hearing shows that the proposed schedules would lessen and possibly destroy the barge-rail traffic to trunk-line and New England territories and also largely to central territory * * *. In any event, * * * the barge-rail traffic via Chicago would not have a fair opportunity to move in competition with the all-rail and lake-rail traffic." (262 I. C. C. 25–26, R. 29.)

The Commission also found that, "The barge rates yield fair returns to the barge carriers, and, for the purpose of this proceeding, may be accepted as reasonable." (262 I. C. C. 19, R. 23.)

[13] These tariffs never went into effect. The status quo was maintained between October 4, 1945, and November 26, 1945, because of the temporary injunction granted by the district court; and thereafter the eastern railroads have refrained from publishing any new rates.

rates on ex-barge grain in accordance with the relationship so prescribed and approved by the Commission (R. 185). Under these rates the railroads would charge higher rates for transportation of ex-barge grain to all eastern destinations than for transportation of ex-rail grain to the same destinations from the same points of origin on the inland waterways system. To many important eastern destinations this difference would amount to three cents per hundred pounds.[14]

The relationship between the proportional rates on ex-barge and ex-rail grain prescribed by the Commission would result in virtually eliminating the rate advantage of utilizing water transportation inbound to Chicago from important origins to important destinations. For example, the dif-

[14] Although the ex-barge proportional rates are stated in terms of differentials under the local rates applicable to the shipment of grain from Chicago to eastern destinations (262 I. C. C. at 32; R. 36, 37), it is the difference between the proportional rates on ex-barge grain and the proportional rates applicable to ex-rail grain transported to Chicago from the same points on the inland waterways system which is of importance. The local rates are not material to any issue presented by this appeal, for, being much higher than proportional rates, they are never used for the through movement of grain from points west of Chicago to points east of Chicago. To state the relationship of ex-barge proportional rates to ex-rail proportional rates in terms of a relationship to the local rates only confuses the real issue and complicates the process of computing the actual amount of the difference between the ex-barge proportional rates and the ex-rail proportional rates.

ference between the inbound barge and rail rates on grain from Morris, Illinois, to Chicago is 7.5 cents. See Tables IV and V, 262 I. C. C. at 39, 40; R. 45, 46. When this grain moves outbound to New York, the penalty of 3 cents proposed to be imposed on grain shipped to that point plus the handling expenses at Chicago peculiar to ex-barge grain, presently 3.25 cents (262 I. C. C. at 23, 24; R. 27), would leave the barge-rail route from Morris to New York an advantage of only 1.25 cents over the all-rail route between the same points.

But even more drastic results would follow establishment of the approved relationship. The present rate advantage of barge over rail transportation from Kansas City to Chicago is 6.5 cents. See Appendix A, Tables IV and V, 262 I. C. C. at 39, 40; R. 45, 46. The sum of the proposed penalty of 3 cents on ex-barge grain and the handling charges of 3.25 cents at Chicago would leave the water-rail routes from Kansas City to New York an advantage over the all-rail routes of only .25 cent, which would be more than balanced, except on shipments from one elevator located on the river bank at Kansas City, by rail switching and transfer charges of 2.64 cents. See 262 I. C. C. at 23, 24, R. 27; also fdg. 18 (g), R. 189.

Thus, the small rate advantages left the water-rail routes would shrink some territories presently

served by the water carriers so as to include only areas from which the trucking costs to the water are less than the rate advantage, 1.25 cents at Morris, Illinois, and would eliminate the water service altogether at other points and give the rail carriers the grain traffic.[15]

Separate suits (consolidated by the district court's order of September 28, 1945, R. 155) were instituted by A. L. Mechling Barge Line, Inland Waterways Corporation, and the Secretary of Agriculture of the United States[16] and the War Food Administrator (R. 1–57, 57–66, 67–74), to set aside the Commission's decision in so far as it ordered or authorized the railroads to charge proportional rates on ex-barge grain which were

[15] These facts, gleaned from the Commission's report, dispel the force of its finding that, "To trunk-line and New England territories the resulting barge-rail combinations will average about 5 cents less than the corresponding all-rail rates" and "To that territory [central] the resulting barge-rail combinations will average 6.5 cents less than the all-rail combinations." (262 I. C. C. at 31, R. 35.)

[16] The Secretary of Agriculture brought suit under Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1291, which provides that in any case before the Commission involving a complaint of a rate or practice relating to the transportation of farm products and affecting the public interest, the Commission shall make the Secretary a party to the proceeding, upon his application for that purpose, with all the rights of a party, including the right to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. See, also, Public Law 733, 79th Congress, Second Session, Section 203 (j).

higher than rates on ex-rail grain, between the same origins on the inland waterways system and the same eastern destinations, by the amounts specified in the differentials prescribed and approved by the Commission.

The United States filed answers (R. 81–84) admitting the allegations of the complaints, and that the Commission's order, in so far as assailed by plaintiffs, was invalid and should be set aside "as erroneous, arbitrary, unsupported by substantial evidence, and contrary to law." The Commission intervened and filed answers asserting the lawfulness of its order (R. 75–80). On October 4, 1945, a temporary injunction was granted to preserve the status quo *pendente lite* (R. 152–155);[17] and on October 16, 1945, the cause was heard on its merits (R. 156–175). On November 26, 1945, the district court entered its comprehensive findings of fact and conclusions of law (R. 177–207), and its final decree (R. 207–209) enjoining and setting aside the Commission's order in so far as assailed by plaintiffs. On Janu-

[17] Appellant argues (Br. pp. 75–77) that this injunction exceeded the court's authority. But it is clear that the temporary relief granted went no further than to preserve the status quo, as to rates, by appropriate means so that the court's final decision might be made fully effective. This is the customary function of an injunction *pendente lite;* and such exercise of equity jurisdiction often occurs in cases involving orders of the Interstate Commerce Commission. *Inland Steel Co.* v. *United States*, 306 U. S. 153, 159–60. In any event, this point is now moot.

ary 24, 1946, appeal was allowed[18] (R. 214–215) and on April 29, 1946, this Court noted probable jurisdiction (R. 228).[19]

[18] By its order of February 21, 1946 (R. 221), the district court amended its order of January 24, 1946, allowing appeal by requiring service of the appeal papers upon the United States by appellant. Appellant contends (Br. pp. 78–82) that such action was error. But it is clear that proper practice requires that all parties to a judgment appealed from be made parties to the appeal. The fundamental rule has long been established that a court should not adjudicate as to a party not actually or constructively before the court. *Bogart* v. *Southern Pacific Co.*, 228 U. S. 137, 146–7. In the case at bar, it is plain that by statutory requirement the United States is an indispensable party. Judicial Code, § 208, 28 U. S. C. 46; *Lambert Run Coal Co.* v. *B. & O. R. R. Co.*, 258 U. S. 377, 382. It is likewise obvious, under elementary principles of pleading, as well as the specific provisions of Rule 8 (b) of the Federal Rules of Civil Procedure, that a party has an option whether to "admit or deny the averments" of the complaint. Rule 11 requires a conscientious belief by the attorney signing the pleading that there is good ground to support it. Moreover, an attorney representing the United States is under a peculiar obligation to give due heed to all aspects of the public interest. *Viereck* v. *United States*, 318 U. S. 236, 248. The right of the United States to bring suit in the first instance, or to appeal, is not presented in this case; here the Commission is appellant, and no one questions its right to take an appeal.

[19] Appellant's brief does not raise any questions as to jurisdiction. The reviewability of the Commission's order is indisputable, for as a result of the Commission's finding prescribing the relationship between ex-barge and ex-rail rates, the Eastern railroads are required to publish rates in accordance with that finding (262 I. C. C. 32, R. 36, 37).

SUMMARY OF ARGUMENT

I

The Commission's effort to equalize the rates of water-rail and all-rail transportation instead of preserving the inherent advantages of water transportation violates the legislative intent clearly expressed in the Transportation Act of 1940. The legislative history of that Act clearly shows that the Congress recognized that one of the inherent advantages of water transportation was its low rates. Specific provisions were incorporated for the protection of water transpor-

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This is recognized both by the majority of the Commission, and by the dissenting members.

The proportional rates on ex-barge grain described in the finding are referred to throughout the Commission's report as "prescribed" rates. 262 I. C. C. at 11, 19, 24, 31, 38–40; R. 15, 22, 28, 35, 36, 43–46. Likewise, the dissenting Commissioners, in alluding to the finding, used phrases such as "the majority has decided to increase", "will require" and "respondents must continue." 262 I. C. C. at 34, 35, 37; R. 39, 42.

Under the Commission's finding, publication by the eastern railroads of proportional rates on ex-barge grain which would be any "less favorable to the ex-barge traffic" and any "more favorable to the ex-rail and ex-lake traffic" (262 I. C. C. 32, R. 36) than those prescribed would constitute a departure from the provisions of the finding and subject the carriers to the penalties imposed by the Act. As the requisites of equity are satisfied here, the threat of sanctions makes the finding an order subject to judicial review. *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 135–144; *Columbia Broadcasting System* v. *United States*, 316 U. S. 407; *Schenley Distillers Corporation* v. *United States*, 326 U. S. 432, 436.

tation in order to insure to the public the benefits of such low rates. The Commission, on the other hand, has here attempted to raise the rates on water-borne traffic to such an extent as would permit movement over competitive rail routes.

II

The relationship prescribed by the Commission between ex-barge and ex-rail rates violates the Interstate Commerce Act. Section 3 (4) of the Act prohibits discrimination against connecting carriers. Appellees Mechling and Inland Waterways Corporation are entitled to the protection afforded by Section 3 (4). Farmers, shippers, and other parties entitled to the protection of Sections 1, 2, and 3 of the Act are likewise injured by the rate relationship prescribed by the Commission.

III

The Commission's conclusions lack the requisite "rational basis." The Commission's conclusions are based upon irrelevant and immaterial findings. But no findings which would be adequate to support the relationship prescribed are made by the Commission. In the absence of appropriate findings supported by substantial evidence, disclosing substantial differences in transportation conditions and circumstances with respect to the traffic involved, the relationship prescribed by the Commission is plainly prohibited by law

and cannot be justified. The Commission has failed to make findings with respect to the traffic in controversy, i. e. traffic from the area where the barge-rail and all-rail routes are competitive.

ARGUMENT

I

THE COMMISSION'S EFFORTS TO EQUALIZE THE COSTS OF WATER-RAIL AND ALL-RAIL TRANSPORTATION INSTEAD OF PRESERVING THE INHERENT ADVANTAGES OF WATER TRANSPORTATION VIOLATES THE LEGISLATIVE INTENT CLEARLY EXPRESSED IN THE TRANSPORTATION ACT OF 1940

Part III of the Interstate Commerce Act as amended, relating to regulation of water carriers by the Interstate Commerce Commission, was added by the Transportation Act of September 18, 1940 (54 Stat. 898). That legislation was enacted only after considerable opposition had been expressed by water carriers and shippers affected by the proposed extension of the Commission's regulatory authority. These opponents of the measure feared that if the Commission were given power over the rates to be charged by water carriers, it might use such power to the detriment of water transportation by raising rates for such transportation to the level of rail rates.[20]

[20] It is a matter of general knowledge that lower rates constitute one of the chief inherent advantages of water transportation over rail transportation. If this advantage were nullified by imposing equal rates for both modes of transportation, traffic would be diverted to the rails because of the

Similar views were expressed upon the floor of the House and Senate during debate. In order to satisfy the doubts entertained by opponents of the bill and to obtain their support for its enactment into law, the sponsors of the legislation included several specific provisions with the express intent of effectively preserving the inherent advantages of water transportation in the matter of rates.[21]

Thus Senator Wheeler, the Committee Chairman who was in charge of the measure in the Senate, repeatedly pointed to the fact that in three separate places in the bill provisions had been incorporated which would prevent regulation by the Commission detrimental to water transportation.[22]

The first of the provisions thus referred to was that embodied in the congressional declaration of

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superior service available in point of speed and convenience. For the Commission to raise the rates of water carriers is to impose an artificial handicap upon such carriers just as much as if it were to require railroads to slow down their service to the extent necessary to place it upon an equal footing with that furnished by water carriers.

[21] In addition to the policy expressed in the 1940 Act, Congress, for more than 150 years, had consistently followed the policy of adopting measures designed to promote utilization of the nation's navigable waterways and to preserve and foster the inherent advantages of low cost derived from utilization of water transportation. See Ex. 150 before the Commission, Tr. p. 3085.

[22] 84 Cong. Rec. 5873–6, 5883, 6131.

the national transportation policy itself, requiring that the Interstate Commerce Act be "so administered as to recognize and preserve the inherent advantages of each" mode of transportation subject to the provisions of the Act (54 Stat. 899; 49 U. S. C., notes preceding Sections 1, 301, and 901).

The second provision to which Senator Wheeler directed attention became part of Section 305 (c) of the Act (54 Stat. 934, 49 U. S. C. 905 (c)), where the rule is established that:

> Differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice within the meaning of any provision of this Act.

The third provision mentioned by Senator Wheeler is found in Section 307 (f) of the Act (54 Stat. 938; 49 U. S. C. 907 (f)), where it is provided that in the exercise of its rate-making power the Commission shall give due consideration, among other factors, "to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed" as well as "to the need, in the public interest, of adequate and efficient water transportation service at the

lowest cost consistent with the furnishing of such services."[25]

At one point in the debate the following colloquy occurred:

> Mr. LUCAS. Returning to the previous discussion with respect to control of inland waterways, I will say to the Senator that I live in the Illinois Valley. We have transportation upon the Illinois River between Chicago and St. Louis and on down the Mississippi to New Orleans. The town in which I live is a focal point for the transportation of wheat and corn down the Illinois. The price of wheat and corn at the elevator there is always 2 or 3 cents higher than it is at elevators some 25 or 30 miles farther inland because of the difference between the rates by rail and those by water.
>
> Under the bill, as I understand it, the Interstate Commerce Commission would have the power, and it would be its duty, to fix rates on the Illinois River with respect to the transportation of that wheat and corn. Would it be possible for the Interstate Commerce Commission to fix the rate the same as the railroad rate from that point to St. Louis?

[25] This provision is similar to the so-called "rule of rate making" in Section 15a (2) of the Act (49 U. S. C. 15a (2)) regarding rail carriers, and was especially designed to protect water carriers and prevent the public from being deprived of the low-cost service furnished by them. 84 Cong. Rec. 6128.

> Mr. WHEELER. Not if the Commission does its duty, because the bill specifically provides that it must take into consideration the inherent advantages of the water carrier. Everyone agrees that goods can be shipped more cheaply by water than by rail.[24]

In response to inquiries from Senator Austin, Senator Wheeler again explained that the natural inherent advantages of water transportation would be protected and preserved against equalization of rates:

> Mr. AUSTIN. So, if there is one type of common carrier which has a natural facility or a natural advantage over another, the bill does not require, indeed, I understand it not to permit, the extinguishment of the natural advantage in competition for the benefit of the competitor which has not the advantage. Am I correct in that interpretation?
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> Mr. WHEELER. The Senator is entirely correct, and I thank him for his statement. In the rate-making provision, and in three different places in the bill, we wrote in such a provision specifically so as to protect them.[25]

This explanation was repeated in answer to another question:

> Mr. ELLENDER. Will the Senator from Montana point out the language in the bill

[24] 84 Cong. Rec. 5879.
[25] 84 Cong. Rec. 5883.

which will give authority to the Interstate Commerce Commission to establish different rates on water transportation in contrast with railroad transportation?

Mr. WHEELER. First, there is the declaration of policy, * * *.

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When the bill speaks of inherent advantages of the shipping interests, it refers to carriers which can transport at a cheaper rate because they can ship by water, by way of canals and the ocean, so they have natural advantages, and they do not have the expense of the upkeep of the rights-of-way, as railroads do.

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Mr. ELLENDER. The Senator stated there were two other places in the bill to which he wished to refer.

Mr. WHEELER. Yes. The next is the rate-making rule.

* * * * *

In other words, if they are fixing the rate for a water carrier, then they must consider the effect on the movement of the traffic of that particular carrier, and if the rate is raised out of proportion, whether or not that carrier would be able to get the business. * * *

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Mr. ELLENDER. In passing upon "adequate and efficient transportation service" will not the Commission have to compare the service of one carrier with that of another?

Mr. WHEELER. Not at all. When the matter came before the committee it did not contain the language which is now in the bill, but the committee took it up with Mr. Eastman and the Commission. We wanted to make it doubly sure that the thing the Senator is afraid of, and that some other people have been afraid of, would not happen; so the committee took the matter up with the Commission and the experts of the Commission, and with Mr. Eastman, and he suggested this particular language because it would have the effect of protecting and doubly protecting against the very thing the Senator has referred to.

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Mr. WHEELER. The third provision, referred to by the Senator from Louisiana, * * * reads as follows:

> That differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice * * *.

So in three different places we have gone on record and done everything that is humanly possible to protect different forms of transportation.[26]

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[26] 84 Cong. Rec. 6126-6128, 6131. Commissioner Eastman likewise regarded these three provisions as furnishing ade-

Following this discussion, Senator Borah asked, with prophetic insight:

> But if we place the regulation of the railroads under the same Commission and the same authority as we place the regulation of water transportation and depend alone upon what are called the inherent advantages for the purpose of distinguishing the water rates from the railroad rates, is it not almost a certainty that in a very short time there will be very little distinction between the rates of the two services?
>
> Mr. WHEELER. I think the Senator is wrong.[27]

The legislative intent emerges with equal clearness from the debate in the House. As explained by Chairman Lea of the Committee on Interstate Commerce:

> The bill very plainly, about as plainly as language can be written, provides for the protection of the inherent advantages of water transportation as contrasted with other means of transportation. In fixing rates the water carrier is assured the advantages of the cheaper rate at which he can transport property.[28]

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quate assurance that the public would not be denied the "benefit and economy" of water transportation. 86 Cong. Rec. 10191-2.

[27] 84 Cong. Rec. 6149.

[28] 84 Cong. Rec. 9862. Reference was also made to the provisions which became Sections 307 (f), 307 (d), and 305 (c) of the Act (49 U. S. C. 907 (f), 907 (d), and 905 (c)). It is provided in Section 307 (d):

After the bill had been the subject of conference, the House conferees said in their statement accompanying the conference report:

> The conferees are unanimously in harmony in the viewpoint that the inherent advantages of each type of carrier should be preserved for the benefit of the Nation. Legitimate regulation must look to the protection of the economic advantage of each type of carrier against destructive competition of the other. No carriers should be required to charge unreasonable rates for the benefit or purpose of compelling diversion of traffic to a competitor.
>
> The other provisions of this bill afford ample protection for the preservation of the inherent advantages of water transportation.
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> The new declaration of policy to be embodied in the Interstate Commerce Act provides a rule of interpretation applicable to all the provisions of that Act, namely, that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." The declaration of policy also asserts it to be "the national transportation policy of the Congress to

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In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water.

provide for fair and impartial regulation of all modes of transportation" subject to the Act. It further declares that the provisions of the Act are to be "so administered as to recognize and preserve the inherent advantages of each."[29]

Referring to Section 307 (f) and the requirement that the Commission consider the effect of rates upon the movement of traffic, it was declared that:

> This rule of rate making for water transportation is wholly inconsistent with the theory that the Commission might prescribe an unreasonable rate for a water carrier for the purpose of forcing its traffic to a competing carrier.
>
> Other provisions of the conference substitute, further protect water carriers in their right to operate at low rates.[30]

After mentioning Section 305 (c), it is noted that:

> Outside of special provisions designed to protect water carriers the rule of reasonable rates in itself prohibits the imposition of an unreasonably high rate for any carrier for the purpose of aiding a competitive carrier. There is no authority for the contention that the Commission has any right to require a rate higher than is reasonable for the purpose of diverting

[29] 86 Cong. Rec. 10172.
[30] 86 Cong. Rec. 10172.

traffic from any given type of carrier to a competitor.[31]

This review of the legislative history, of which the foregoing quotations are sufficiently illustrative, demonstrates that the major purpose of Congress in adopting the national transportation policy was to protect and preserve, as an inherent advantage, the lower rates of carriers, particularly water carriers, and to impose upon the Commission the duty to administer the various provisions of the Interstate Commerce Act so as not only to protect and preserve the lower rates but to foster the inherent advantage of lower rates in every way available to the Commission.

Obviously, the policy provided no justification for the attempt which the Commission has made to equalize the transportation costs on grain over the barge-rail and all-rail routes. On the contrary, the policy was adopted to preclude such action. But instead of interpreting the policy to mean that the outbound ex-barge proportional rail rates must be adjusted so as to reflect fully the lower inbound barge rates, the Commission prescribed and approved the relationship here attacked. It treated ex-barge grain as entitled to nothing better than "a fair opportunity to move in competition with the lake-rail and all-rail traffics". (262 I. C. C. at 29, R. 33.)

In establishing the relationship between ex-barge and ex-rail rates set forth in its report,

[31] 86 Cong. Rec. 10172.

the Commission has interpreted the policy as if it imposed upon the Commission a duty to protect the traffic of railroads by adjusting rates over the water-rail routes so that the through rates over water-rail routes will not attract traffic from all-rail routes; in other words, to require that transportation costs over water-rail routes be equalized with those over all-rail routes. This basic defect in the Commission's mode of reasoning is clearly disclosed where it states that:

> The barge-rail rates are far below the all-rail rates from the same and other Illinois origins. This is an inequitable situation giving rise to requests for reductions in the all-rail rates from the Illinois and central territory origins and it is difficult to see, with such extreme disparities, how such requests could properly be denied. (262 I. C. C. 20, R. 24).[32]

This conclusion reveals that the Commission considers itself under a duty to equalize economic opportunities among shippers utilizing the barge-rail and all-rail routes. The Commission's report shows that it interprets the Act as requiring that the barge-rail and all-rail rates be so adjusted that grain from points located on both barge-rail and all-rail routes may move freely by either

[32] The Commission's fear there expressed "that the present ex-barge proportionals from Chicago jeopardize the all-rail rate structure" does not provide any legal basis for imposing higher rates on ex-barge grain. *United States* v. *Chicago, Milwaukee, St. P. & P. R. Co.*, 294 U. S. 499, 507.

route. In other words, the Commission felt obliged to equalize competitive opportunities between the barge-rail and all-rail routes without regard to the fact that inbound barge rates reflect a natural or "inherent" advantage which is not available to shippers not having access to water transportation. But such inherent natural advantage resulting in lower rates for the benefit of those who are in a position to utilize them must be recognized and preserved, if the congressional intent manifested in the national transportation policy is not to be flouted.[33]

The Commission's treatment of the relationship between the rates involved is shown by the following discussion (262 I. C. C. 23, 24–26, 29; R. 27–29, 33):

> The proportionals from Chicago on the ex-barge grain being substantially the same as on ex-rail and ex-lake grain, the Chicago dealers are able to maintain the Chicago price without discount on grain backed by barge billing and to utilize such grain in their hedging operations. The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago

[33] Even apart from the specific mandate that the inherent advantages of water transportation must be preserved, it has long been settled law that it is not the function of the Commission under the Interstate Commerce Act "to equalize fortunes, opportunities, or abilities" among competitors in the economic struggle for existence. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46.

price, less the barge rate and the applicable costs and margins peculiar to the barge traffic. Where the deductions are less on the barge than on the rail traffic the net price to the farmer is correspondingly greater, the difference diminishing as distance from the Waterway increases until finally it disappears altogether. * * *

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The primary interest of the Illinois farmer having access to the Waterway is in the greater net price above referred to. The barge lines and the Waterway elevator operators and dealers are primarily concerned with the volume of traffic moving through their facilities.

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The principal questions presented on further hearing are whether the ex-barge traffic from Chicago is entitled to proportionals lower than the local rates, and if so, how much lower.

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Under the proposed schedules the rates on the ex-barge traffic made on the full local basis, much higher than the ex-rail and ex-lake proportionals or specifics, would result in barge-rail combinations higher in some instances than the all-rail rates from the same origins. Under such a basis Chicago dealers could not use grain backed by barge billing in their marketing and hedging operations without a substantial discount in price. The record as amplified on further

hearing shows that the proposed schedules would lessen and possibly destroy the barge-rail traffic to trunk-line and New England territories and also largely to central territory in view of the lake local, joint rate, transit, and discount situations above referred to. Whether they would restore the traffic to the all-rail routes is problematical. They might have the effect of diverting the grain from these northern Illinois origins to barge movements to the South. In any event, under the proposed schedules, the barge-rail traffic via Chicago would not have a fair opportunity to move in competition with the all-rail and lake-rail traffic.

We conclude that the ex-barge traffic is entitled to proportionals lower than the local rates.

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In determining how much lower the ex-barge proportionals should be than the local rates and how much higher than the ex-rail and ex-lake proportionals or specifics, consideration must be given to their effect on the movement of the traffic. The present combinations on the barge-rail traffic, being so much lower than the all-rail rates from the same and other origins have diverted and will continue to divert a substantial portion of the traffic to the barge-rail routes via Chicago from the all-rail routes, including those through Indianapolis and other markets. This is due, in

part, to the level of the barge rates. However, it is also partly due to the level of the present ex-barge proportionals. * * *

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* * * Under the proportionals approved herein on the ex-barge traffic, it may be necessary to accord grain backed by barge billing some discount under the Chicago price, but certainly there is no reason why such discount should be as great as the increases resulting from such proportionals.

If the rates on the ex-barge traffic are adjusted "in view of its particular circumstances and under the provisions of the Act designed with reference thereto," the barge-rail traffic will have a fair opportunity to move in competition with the lake-rail and all-rail traffics * * *.

It is obvious from the Commission's report that the ex-barge proportionals prescribed by it are merely a compromise between the existing rates on ex-barge grain and the higher local rates, application of which was proposed by the railroads in the schedules under suspension. The Commission attempted to raise the rates on water-borne traffic to such an extent as would permit movement over the competitive rail route. This is the meaning of the Commission's statements "that proportional rates should be so adjusted as to * * * be non-destructive of either" form of transportation, and that the barge-rail traffic should "have a fair opportunity to move in competition with the lake-rail and

all-rail traffics." (262 I. C. C. at 26, 29; R. 30, 33.) In plainer language, what the Commission is here saying is that it believes that the all-rail routes serving points having access to water transportation should be entitled to share in, or recapture, the traffic which is now handled by the barge-rail routes. But the national transportation policy as established by Congress does not permit the Commission to exercise this function of compromise and conciliation. It requires that the inherent advantages of water transportation be fully recognized and protected. This means that if the water transportation can be furnished at just and reasonable rates which are so much lower than the comparable rail rates that all the traffic is attracted to the water carriers, such carriers are entitled to transport all the available traffic unless and until the railroads lawfully reduce their rates to the extent necessary to regain a portion of the traffic. That such was the legislative intent, which the Commission has here violated, is abundantly clear from the legislative history of the 1940 Act heretofore reviewed.

The Commission has not only violated the national transportation policy in prescribing the relationship in proportional rates here in issue, but it has erroneously attempted to rest the validity of this relationship upon the policy. This attempt is shown by the following excerpt from the Commission's report:

> The ex-barge traffic cannot be averaged with the ex-rail transportation and accorded the same outbound proportionals if, as the Act requires, the inherent advantage of each form of transportation is to be preserved, for to do so would not only give full effect to the lower inbound cost but, in addition, would extend to the barge-rail transportation most of the advantages of all-rail transportation. However, all of the ex-barge traffic can and should be accorded uniform proportionals reflecting average conditions surrounding barge-rail transportation, to promote its movement by meeting so far as practicable the commercial needs thereof. (262 I. C. C. 31; R. 35.)

The Commission has here treated the present ex-rail proportional rail rates outbound from Chicago as if they were depressed factors of the through all-rail rates from points west of Chicago, made lower than the local rates from Chicago in order to move grain over the through all-rail routes. It views the utilization of those depressed factors as an inherent advantage of all-rail transportation which would not be preserved if ex-barge grain were accorded outbound proportional rates equal to those on ex-rail grain. Stated differently, the Commission has here said that the national transportation policy requires that the ex-rail proportional rates be protected, as an inherent advantage peculiar to all-rail transportation, by raising the ex-barge rates to a level

which would give the ex-rail proportionals maximum protection from water competition and still meet "so far as practicable the commercial needs" of the barge-rail traffic; in other words, ex-barge grain should be charged the local rates outbound from Chicago, except to the extent that reduction is imperative in order to permit the movement of barge-rail traffic."

But the national transportation policy is that the Interstate Commerce Act shall be administered so as to recognize and preserve the inherent advantages of each mode of transportation. Where, as here, relatively higher proportional rail rates on ex-barge grain outbound from Chicago would

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" In thus relying upon the traditional railroad philosophy of charging "what the traffic will bear" (*Livestock-Western District Rates*, 176 I. C. C. 1, 82–83), the Commission treats the national transportation policy as applicable only in the case of local rates, and not to through rates over water-rail routes. But there is no warrant in the statutory language for such a distinction; the charges for through transportation must also reflect the inherent rate advantages of water carriers if the policy is not to be nullified. Notwithstanding the enactment of the national transportation policy the Commission applied the theory "that the carrier should decide what, in view of all the circumstances, the articles could afford to pay and then charge neither more nor less—certainly not less, because then the profit would be lower than it otherwise would, and not more, because a higher charge would curtail the amount of the traffic and the revenue derived therefrom, or possibly destroy the shipper and lose all his freight." P. 15, *Comparison of Rail, Motor, and Water Carrier Costs*, prepared by the Board of Investigation and Research, S. Doc. No. 84, 79th Congress, 1st Session, dated September 20, 1944.

destroy or seriously curtail the inherent advantage of utilizing low cost water transportation inbound to Chicago, the policy requires that the outbound rates shall be constructed so as to preserve this inherent advantage of barge transportation.

Moreover, the Commission's construction of the national transportation policy would treat as of no consequence the fact that the eastern railroads for many years have transported both ex-barge and ex-rail grain outbound from Chicago for the existing proportional rates. Whatever may be the normal rule of rate-making, the policy requires that any adjustment in the outbound rates be made so that ex-barge grain is not left at a disadvantage. We submit that the policy fails to provide any support for the proposition that ex-barge grain should be denied treatment equal to that given ex-rail grain merely because ex-barge grain might bear higher charges and still move to the market place.

In addition, the Commission's construction would be tantamount to a holding that the policy restricts the protection afforded connecting carriers, shippers and other persons and classes by the Interstate Commerce Act, which prohibits any discrimination in rates and charges within the power of Congress to condemn. *Mitchell* v. *United States*, 313 U. S. 80, 94. As shown by the legislative history, there is no basis for the con-

clusion that Congress intended that the policy should modify in any degree the protection given by the Act. On the contrary, the policy was adopted to preclude such a result.

The Commission argues that the policy does not define the inherent advantages of each mode of transportation and that, necessarily, it is left to the Commission to ascertain and evaluate the inherent advantages of each mode of transportation where they collide. The collision here is between the low inbound water rates and the higher inbound rail rates. To compensate for the low water rates, the Commission has increased the outbound rail rates on the barge traffic. But plainly the higher cost of rail transportation is not one of its inherent advantages.

Sound statutory construction would seem to require that the Commission turn to the legislative history to learn the congressional intent in using the term "inherent advantages" which, the Commission has conceded, is not defined in the national transportation policy. But the Commission has not mentioned this history.

There the Commission would have found the explanation of Congressman Halleck, a member of the Subcommittee of the House Committee on Interstate and Foreign Commerce:

> Rail transportation is the most valuable transportation because it is faster and more convenient. The water people will admit that. If a person had the same rate he

> would ship by rail rather than water. As a result the ceiling of rates is fixed by the railroads. The water carriers operate under that ceiling at a competitive point because their costs are less. The bill recognizes that differential and the reason supporting it. This bill provides for the continuation of that differential.[35]

Plainly, greater speed and convenience are the principal inherent advantages of rail service. We have found no reference to others in the legislative history. But the lower rates of the water carriers would not deprive the public of the more valuable greater speed and convenience of the rail service.

Accordingly, there is no collision here between the inherent advantages of water and rail service. The collision is between the healthy rate competition of competing modes of transportation, which Congress intended to preserve. It would be just as reasonable to require the rail lines to reduce their speed as it is to deprive the public of the inherently lower rates of the water carriers.

II

THE RELATIONSHIP PRESCRIBED BY THE COMMISSION, BETWEEN EX-BARGE AND EX-RAIL RATES VIOLATES THE INTERSTATE COMMERCE ACT

Apart from the specific protection and preservation of the inherent advantages of water transportation which were advisedly incorporated in the Transportation Act of 1940, it is clear that

[35] 84 Cong. Rec. 9711.

the relationship here prescribed and approved by the Commission and sought to be put into effect by the eastern railroads between the proportional rates for ex-barge traffic and the proportional rates applicable to ex-rail and ex-lake traffic is plainly prohibited by various provisions of the Interstate Commerce Act under the circumstances disclosed in the Commission's report.

The proportional rates here in issue differ from the local rates in that they apply only to movements to and from points beyond the initial carrier's line. These proportional rates are not applicable to movements commencing and ending on the line of the carrier publishing them. The carrier's local rates would apply to such transportation. The fact that the rates in issue are "proportional" is of no significance. The rates of carriers subject to the Act must conform to the transportation standard, whether they be joint, local or proportional. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 771, 776. In fact, the Commission concedes that proportional rates must be tested by the same criteria as other separately established rates. (262 I. C. C. 26, R. 30.)

Where the Commission prescribes rates for the future, such exercise of power must be confined to the obvious purpose and directions of the statute. See *Texas and Pacific Railway Company* v. *Interstate Commerce Commission*, 162 U. S. 197, 216. "Obviously, what the carrier may not lawfully do, the Commission may not compel." *Texas & Pa-*

cific Railway Company v. *United States*, 289 U. S. 627, 637. Hence, the Commission's determination with respect to the validity of the prescribed relationship in rates is subject to the same statutory tests as rates which are published by the carriers in the exercise of managerial discretion.

Under the relationship in proportional rates prescribed by the Commission, grain transported to Chicago by barge would be assessed higher proportional rates in all cases for the movement outbound by rail from Chicago to eastern destinations than the proportional rates which the eastern railroads would apply on the outbound haul from that point to grain moved to Chicago by rail from points on or near the waterways where the inbound water and rail carriers compete for traffic. To the most important destinations, this difference would amount to 3 cents per hundred pounds.

A WHERE, AS HERE, APPLICATION BY CARRIERS OF A DIFFERENCE IN RATES WILL RESULT IN INJURY TO THEIR CONNECTING LINES, THE DIFFERENCE IN RATES IS UNLAWFUL

The relationship prescribed by the Commission appears to be a plain violation of Section 3 (4) of the Act (49 U. S. C. 3 (4)). That section provides that rail carriers subject to Part I of the Act "shall not discriminate in their rates, fares, and charges between connecting lines" and that the term "connecting line" means "the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III." Appellees Mechling and Inland

Waterways Corporation are water carriers now subject to Part III of the Act and are entitled to the protection afforded by Section 3 (4).*

Unlike Section 3 (1) of the Act, which permits differences in rates and charges assessed to shippers and other persons and classes named therein where they are not "undue" or "unreasonable", Section 3 (4) provides, without any qualification, that carriers "shall not discriminate in their rates, fares, and charges between connecting lines". Thus the latitude given to the Commission under Section 3 (1) is denied to it under Section 3 (4).

In numerous decisions, beginning at an early date, the Commission has given effect to the prohibition against discrimination by railroads, in

* The Commission has suggested (footnote 11, Br. p. 48) that Section 3 (4) of the Act does not operate in favor of the barge traffic because it is intrastate commerce, exempted from regulation by Section 303 (j), and, as to Mechling, that his traffic is beyond the Commission's jurisdiction under Section 303 (b) where not more than three kinds of grain are transported in a given movement. As to the first suggestion, the Commission has granted certificates to appellees Mechling and The Federal Barge Line, operated by Inland Waterways Corporation, authorizing operations by them as interstate common carriers of grain (262 I. C. C. 11, 19; R. 14, 23), which makes them carriers subject to the Act (*General Transp. Co.* v. *United States*, 65 F. Supp. 981 (D. Mass.), aff'd Oct. 14, 1946) and thereby entitled to the protection afforded by Section 3 (4). With respect to the second suggestion, the fact that certain traffic is exempted from regulation under Section 303 (b) of Part III manifestly does not authorize carriers subject to Part I of the Act to discriminate against such traffic, particularly where it is transported to the point of interchange by carriers entitled to the protection of Section 3 (4).

the matter of rates and charges, among connecting lines. In *New York & N. Ry. Co.* v. *New York & N. E. R. Co.*, 4 I. C. C. 702, the Commission interpreted the prohibition as follows (p. 720):

> When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment.

Prior to the proceeding here under review, the Commission has consistently condemned discrimination against connecting water carriers under circumstances substantially identical with those in the instant case.

Thus, in *Chattanooga Packet Co.* v. *Illinois Central R. Co.*, 33 I. C. C. 384, 391-2, decided in 1915, the Commission considered a complaint by a water carrier on the Tennessee and Ohio Rivers, that the rail lines north of the Ohio River applied the local rates to and from river points at which they interchanged traffic with the water carriers, but that on traffic routed over the lines of connecting rail carriers the northern railroads applied lower proportional rates to and from the

river crossings. In a well-reasoned report, the Commission said (pp. 391–2):

> Plainly by these provisions the only difference which carriers can make in the treatment of their connections is such as can be justified by differences in the conditions and circumstances surrounding the service rendered. By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in one case than in the other. [Citing cases.]
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> The Commission has held that a proportional rate, the use of which is limited to shipments over a particular line, is unjustly discriminatory. *Bascom Co.* v. *A., T. & S. F. Ry. Co.*, 17 I. C. C., 354; *Rosenbaum Bros.* v. *L. & N. R. R. Co.*, 22 I. C. C., 62.
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> * * * * *
>
> The fact that the proportional rates to and from the Ohio River are compelled by competition can have no bearing upon our determination of the issue of unjust discrimination. The "like circumstances and conditions" referred to in section 2 of the act are those which arise within the field of haulage, and do not include competition. *Wight* v. *U. S.*, 167 U. S., 512; *I. C. C.* v. *A. M. R. R. Co.*, 168 U. S., 144. The shippers who desire to avail themselves

> of the water-and-rail route must be given equal treatment with those who ship all rail. Any discrimination which exists must not exceed that which is warranted by the differences in the circumstances and conditions of the haul over defendants' lines. *Sondheimer Co.* v. *I. C. R. R. Co.*, 17 I. C. C., 60.
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> * * * * *
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> If carriers are permited to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via their all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters.

The same question was presented in *Restriction of Proportional Rates on Cotton*, 161 I. C. C. 113, 116 (1930), where the southern railroads proposed to restrict the application of proportional rates from southeastern and Carolina points to Cairo, Illinois, and other Ohio and Mississippi River crossings so that the proportional rates would not apply to traffic by barge from the river crossings but would be applicable to traffic destined to move by rail from the crossings. The Commission there said:

> The real question at issue is whether the resulting rates would be unduly prejudicial to barge-line traffic under section 3 of the interstate commerce act in comparison with rates upon similar traffic moving be-

yond the river crossings over rail lines, and also in comparison with rates to these destinations from New England territory. Manifestly, the barge line would be unable to secure any traffic from Cairo to Dubuque, originating at Atlanta, as the rail-and-river rate would exceed the all-rail rate by 11 cents. It appears that the cost of handling traffic by the southern carriers at the river crossings is no greater when delivered to the barge line than when it is delivered to their northern rail connections. If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic via their all-rail connections, they will be in a position to destroy all water competition and to deprive shippers of the advantage of their location upon navigable waters. *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C. 384, 392.

Again, in *Ex-River Grain and Grain Products from Cairo and Metropolis, Ill., to Mississippi Valley*, 177 I. C. C. 206 (1931), the railroads proposed to restrict the application of proportional rates on grain and grain products so that they would apply only to traffic moving outbound by rail; but the Commission said (p. 208):

> There is nothing in this record to indicate that the conditions under which ex-river traffic is or may be handled at Cairo are different from the conditions under which similar traffic is handled all rail. Re-

spondents offered no testimony in justification of charging a higher rate on ex-river grain from Cairo than applies all rail. As hereinbefore stated, on traffic from St. Louis respondents publish the same proportional rate on grain regardless of whether the traffic into St. Louis moves ex-river or ex-rail. Shippers who desire to avail themselves of the water-and-rail route must be given equal treatment with those who ship all-rail. Any difference in rates must not exceed that which is warranted by the difference in the circumstances and conditions surrounding the transportation over respondents' lines. If rail carriers are permitted to apply higher rates on ex-river than on ex-rail traffic merely because of the different mode of transport employed prior to delivery to them, they will be in a position to destroy water competition and to deprive shippers of the advantage of their location upon navigable waters. See *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I. C. C. 384, 392.

Where railroads have attempted to discriminate among connecting water carriers in establishment of through routes and joint rates, the Commission has not hesitated to deal firmly with the situation. Thus, in *Nueces County Navigation District No. 1* v. *Baltimore & Ohio R. Co.*, 223 I. C. C. 75, 95, 98 (1937) the Commission said:

> The issue here is whether or not a rail carrier may, by the adjustment of its rates,

determine the flow of the particular traffic in the interest of a boat line which is its subsidiary, and in order to assure the movement of the traffic by way of its own boat line, commercially close another port on its line and make impracticable the solicitation of the business by and through the complaining port.

* * * * * *

We have previously found that rail carriers cannot choose the particular boat lines with which they will establish through routes and joint rates. In *Pacific Nav. Co.* v. *Southern Pac. Co.*, 31 I. C. C. 472, we stated at page 479:

> If rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint rates, they will be able to dictate who shall operate on the water and who shall not, for a boat line which is accorded a monopoly of the through rail-and-water traffic will soon be able to drive its competitors out of business. The spirit of the act to regulate commerce is to maintain the freedom of our ports and to allow boat lines to engage in traffic upon equal terms. To permit the rail carriers serving a port to favor one boat line or another would destroy the freedom of competition between boat lines which the act is intended to preserve, and would practically close ports to all but the favored vessels.

The Commission has recently not only construed Section 3 (4) of the Act to prohibit railroads from discriminating in rates among connecting water lines but also has held that such discrimination would not be consistent with the national transportation policy adopted by Congress in 1940. In *Maximum Rate Provision, Ocean-Rail to Southwest*, 258 I. C. C. 63 (1944), the railroads serving Arkansas, Louisiana, Oklahoma and Texas proposed to cancel a provision in their tariffs to the effect that the ocean-rail rates from the Atlantic seaboard to the Southwest should not exceed the ocean-rail rates from the Atlantic ports to Deming, New Mexico, and to apply in lieu of that provision higher rates specifically named in the proposed tariff. The Commission rejected the proposal with the following words (pp. 69–70):

> If the proposed cancellation became effective, the rates from north Atlantic ports to Deming would apply only at points on specific routes in connection with the Morgan Line and the Southern Steamship Company. Traffic in connection with all other steamship lines would be subject to the higher specific rates to those points. For example, a rate of $1.10 applies on cordage from New York to El Paso in connection with the Morgan Line to Galveston or Houston, thence Southern Pacific. But if the shipment were tendered

> to the Southern Pacific at those ports by any other steamship line, the rate would be $1.66, despite the fact that the service rendered in each instance by the rail carrier would be the same. This would result in undue prejudice to those steamship lines in violation of section 3 (4) of the act * * *.
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> * * * * * *
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> The effect of the proposal would be disadvantageous to the north Atlantic and Gulf ports and to shippers at points in Atlantic seaboard territory who ship over ocean-rail routes to the Southwest. It would also render more difficult the resumption of coastwise operation by certain steamship lines by restricting the destination area to which competitive traffic would move in connection with those lines at rates lower than those over the all-rail routes. The national transportation policy, as declared by the Congress, requires the act to be so administered as to recognize and preserve the inherent advantages of each mode of transportation to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail. Respondents' proposal is not consistent with that policy.

It is thus clear that prior Commission decisions have uniformly treated as forbidden by Section 3 (4) such discrimination against connecting water carriers as is involved in the case at bar.

B. WHERE, AS HERE, APPLICATION BY CARRIERS OF A DIFFERENCE IN RATES WILL RESULT IN INJURY TO SHIPPERS OR PERSONS AND CLASSES PROTECTED BY SECTIONS 1, 2, AND 3 (1) OF THE ACT, THE DIFFERENCE IN RATES IS UNLAWFUL

As indicated by the foregoing cases, the prescribed relationship between ex-barge rates and ex-rail rates on grain also violates the long established prohibitions of Sections 1, 2, and 3 of the Act against unreasonableness, unjust discrimination, and undue prejudice. The prescribed relationship is subject to the same criticism which was directed against the proposed schedule by the late Commissioner Joseph B. Eastman in his dissenting opinion. Mr. Eastman said:

> In view of the long continuance of the reshipping rates and having in mind the level of the proportional rates which we have prescribed on grain in western territory, it can be urged with force that the local rates are unreasonable, under section 1, for application on this ex-barge grain. However, it is unnecessary to go into this, if, as I believe, the proposed schedules are clearly unlawful under sections 2 and 3.
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> * * * * *
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> Clearly this is a case where it is proposed to charge persons shipping ex-barge grain a greater compensation than is charged other persons shipping ex-rail or ex-lake grain for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." and clearly,

also, this would result in a violation of section 2.

The same facts which spell a violation of section 2, if the proposed schedules become effective, likewise spell a violation of section 3, when coupled with the positive evidence that these schedules will result in injury to the producers of ex-barge grain, at least during the season when transportation by lake from Chicago is not available. In this connection it was pointed out in the prior report that under section 3 (1), as amended by the Transportation Act of 1940, "undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful." The undue prejudice with which I am concerned, however, is not to the operators of the barge lines but to the shippers of the grain. (248 I. C. C. 321–323.)

Unreasonableness of the rates for application on ex-barge traffic may be shown by comparison with the ex-lake and ex-rail rates on the same commodity. It is well-settled law that reasonableness of challenged rates may be determined by comparison with other rates on similar commodities in the same general territory.[37] Application of

[37] *St. Louis Southwestern Railway Company* v. *United States*, 245 U. S. 136, 145; *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, 480; *United States* v. *Northern Pacific Railway Co.*, 288 U. S. 490, 500; *Chicago, Rock Island & Pacific Railway Company* v. *United States*, 274 U. S. 29, 32.

this test is even more pertinent here than in most cases, since here it is proposed to charge different rates for transporting the same kind of grain between the same points. Such transportation might frequently be in the same train. Application of different rates would be predicated solely upon the fortuitous circumstances whether the grain had been transported to Chicago by barge or by rail. The long continuance of the equality of treatment accorded ex-barge and ex-rail grain by the eastern railroads is evidence of the reasonableness of the past relationship, and of the unreasonableness of the higher rates to be charged under the prescribed relationship for transportation of ex-barge grain. Furthermore, the lower proportional rates applicable on ex-rail and ex-lake grains would be an appropriate standard for measuring and condemning as unreasonable the higher rates on ex-barge grain.

As was said by Commissioner Alldredge in his dissent:

> If there is no justification for the increase in rates which the majority here extends to the eastern rail lines—and I do not think there is in the circumstances of this case—then those increases are unjust and unreasonable under section 1 of the act and the declared purpose of the national transportation policy under which all provisions of the act are to be administered, and should not be sanctioned. (262 I. C. C. at 35, R. 39.)

Given proof of injury resulting from a difference in rates, it is well established that the "discrimination", "preference" and "prejudice" prohibited by Sections 2 and 3 (1) of the Interstate Commerce Act are presumptively "unjust", "undue" and "unreasonable" in the absence of a showing that differences in transportation circumstances and conditions justify the difference in rates. Carriers "may not adjust their rates with the motive of injuring or aiding a shipper, a particular kind of traffic, or a locality, for so to do is to depart from the transportation standard, conformity to which the Act contemplates, and substitute others which are prohibited. A tariff published for the purpose of destroying a market or building up one, of diverting traffic from a particular place to the injury of that place, or in aid of some other, is unlawful." *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627, 637. See, also, *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433, 444; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 524; *Atchison, T. & S. F. Ry. Co.* v. *Interstate Commerce Commission*, 190 Fed. 591; *Anchor Coal Co.* v. *United States*, 25 F. 2d 462, 471.[38]

[38] The Commission's own decisions recognize the same principle. *Ashland Fire Brick Co.* v. *Southern Ry. Co.*, 22 I. C. C. 115, 121; *Chamber of Commerce of New York* v. *N. Y. C.*

It cannot be seriously disputed that the relatively higher proportional rates on ex-barge grain prescribed and approved by the Commission will result in injury not only to appellees Mechling and Inland Waterways Corporation, but also to the producers and shippers of grain served by the water carriers and the territory served by them.

The Commission's report makes this clear. It found that "The net price to the Illinois farmer selling his grain for transportation by barge to the Chicago market is determined by the Chicago price, less the barge rate and the applicable costs and margins peculiar to the barge traffic. Where the deductions are less on the barge than on the rail traffic the net price to the farmer is correspondingly greater, the difference diminishing as distance from the Waterway increases until finally it disappears altogether." (262 I. C. C. 23, R. 27.)

The Commission further found that, "The primary interest of the Illinois farmer having access to the Waterway is in the greater net price above referred to. The barge lines and the Waterway elevator operators and dealers are primarily con-

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& H. R. R. Co., 24 I. C. C. 55, 63, 76, 75; *Maritime Association of Boston* v. *Ann Arbor R. Co.*, 95 I. C. C. 539, 565; *Mississippi Cotton Seed Crushers Association* v. *Atlanta, Birmingham & Coast Railroad Company*, 238 I. C. C. 87; *Continental Steel Corporation* v. *New York, Chicago & St. Louis Railroad Company*, 256 I. C. C. 167.

cerned with the volume of traffic moving through their facilities." (262 I. C. C. 24, R. 27.)

The Commission conceded that the relatively higher proportional rates prescribed and approved for ex-barge grain will result in Chicago dealers refusing to purchase ex-barge grain except at a discount from the Chicago price. "Under the proportionals approved herein on the ex-barge traffic, it may be necessary to accord grain backed by barge billing some discount under the Chicago price, but certainly there is no reason why such discount should be as great as the increases resulting from such proportionals." (262 I. C. C. 29, R. 33.) The fact is that all grain of like kind and grade reaches a common price at Chicago, regardless of the cost, mode or length of inbound transportation. (Fdg. 10, R. 180.) Accordingly, there can be no doubt that dealers will refuse to purchase ex-barge grain in competition with ex-rail grain except for the full discount from the Chicago price equal to the difference between the outbound proportional rates on ex-rail and ex-barge grain.[39]

[39] The only possible exception would be during the season when water transportation on the Great Lakes would be available for the outbound movement. But dealers generally know neither the ultimate destination nor the eventual purchaser when they buy grain on the Chicago market, and they would undoubtedly offer prices for ex-barge grain which would give them complete freedom with respect to resale of

Such discounts would reduce the net prices received by the farmers having access to the Waterway. The reduction in the spread between the net price paid the farmers for grain transported by barge and rail would shrink the territory served by the water carriers and this would manifestly curtail the volume of grain moving through the facilities of both the Waterway elevator operators and the barge lines, with corresponding decreases in their returns.[40]

As the Commission's report shows that not only the water carriers but also the producers, shippers, and the territory served by the water carriers, will be injured by the relatively higher proportional rates on ex-barge grain,[41] it follows that

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the grain. See *Atchison, Topeka & Santa Fe Railway Company* v. *United States*, 279 U. S. 768, 777–778.

[40] The district court made extensive findings with respect to the consequences which would result from application of the relatively higher rates on ex-barge grain. (Fdgs. 17–21, R. 185–190.)

[41] It may be argued that shippers utilizing the barge-rail routes would suffer no damage from application of the relatively higher ex-barge proportional rates, for the total cost of transportation from origin to destination (made up of the combination of the barge rate proper, the handling charges peculiar to barge grain and the higher ex-barge proportional east of Chicago) would be no greater than the total rate (comprising the inbound rail rate factor to Chicago plus the ex-rail proportional) paid by all-rail shippers from points on the inland waterways system. But it is the loss of the inherent advantage of low-cost water transportation that would injure the shipper located on the barge line. It is no

the injury creates a presumption of unjust discrimination and undue prejudice to them and in the absence of some justification, Sections 2 and 3 (1) of the Act prohibit the prescribed and approved relationship in proportional rates.

Section 2 of the Act (49 U. S. C. 2) condemns as unjust discrimination the collection from any person or persons of a greater or less compensation than the carrier collects "from any other person or persons for doing for him or them a like and contemporaneous service in the trans-

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answer to say that shippers in a position to utilize the waterways will not be damaged by higher rates because those rates will be no higher than the rates paid by shippers burdened with the disadvantage of high cost rail transportation.

Moreover, the eastern railroads cannot be relieved from the obligation to treat shippers equally imposed by Sections 2 and 3 by reason of the existing relationship maintained by western railroads between inbound rail rates and barge rates. The western railroads are under no obligation to shippers utilizing the barge-rail routes to maintain the present relationship between inbound rail rates and barge rates. "A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself." *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U. S. 499, 506. It would be a novel rule of law which would relieve from liability a carrier maintaining a discriminatory rate relationship merely because another carrier over which the first carrier had no control maintained a rate level which imposed a burden upon shippers on its line no greater than the burden upon shippers who were victims of the discrimination. Further, any such argument would fail to justify the injury which the discriminatory rate relationship would impose upon the water carriers and the territory served by them.

portation of a like kind of traffic under substantially similar circumstances and conditions".[42]

Although the nature of the antecedent haul has been treated by the Commission in the decision here under review and in one prior case, *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, as a circumstance to be considered in determining whether a relationship in rates is violative of Section 2, the weight of the Commission's decisions supports the view that differences in prior transportation are not pertinent to the issue.[43] Prior and subsequent transportation may be considered where proportional rates are challenged as violating Section 2 because of being

[42] As pointed out by Commissioner Eastman, citing numerous decisions of this Court, the "circumstances and conditions" to which section 2 refers are those which are "incident to the transportation service and not those which are extraneous thereto." (248 I. C. C. at 316.) *Wight* v. *United States*, 167 U. S. 512; *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144; *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *Baltimore and Ohio R. Co.*, 225 U. S. 326; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768; *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501; *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344.

[43] *Chattanooga Packet Company* v. *Illinois Central Railroad Company*, 33 I. C. C. 384; *Raw Sugar, New Orleans to Gramercy and Reserve, La.*, 206 I. C. C. 231; *Restriction of Proportional Rates on Cotton*, 161 I. C. C. 113; *Ex-River Grain and Grain Products from Cairo and Metropolis, Ill., to Mississippi Valley*, 177 I. C. C. 206; *Inland Navigation Company* v. *Wabash Railway Company*, 43 I. C. C. 588.

lower than local rates. *Texas and Pacific Railway Company* v. *Interstate Commerce Commission*, 162 U. S. 197. But here what is involved is the relationship of proportional rates among themselves; and the prior transportation is the same except for the circumstance that ex-barge grain moves by water instead of rail from the point of origin. It is not local rates, but the lower ex-rail proportional rates which here constitute the standard of comparison for challenging the validity of the ex-barge proportional rates."

Section 3 (1) of the Act (49 U. S. C. 3 (1)) is more comprehensive than Section 2. *Mitchell* v. *United States*, 313 U. S. 80, 95. "It differs from § 2 in that it may be availed of not only by shippers but by any other person who has been or may be injured by an inequality of rates." *Barringer & Co.* v. *United States*, 319 U. S. 1, 13. It prohibits undue prejudice or preference "to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic." Shippers of grain, as well as water carriers [45] utilizing the inland waterways system, are clearly entitled to the

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[44] Proportional rates are factors governing through movements, and are regarded as reflecting substantial dissimilarity in "circumstances and conditions" as compared with local rates. See the discussion by Commissioner Eastman in 248 I. C. C. at 317–19; *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671, 684–5.

[45] Section 3 (1) carries a proviso that the prohibitions thereof shall not be construed to apply to discrimination,

protection afforded by Section 3 (1). Such persons will be confronted with higher proportional rates to eastern destinations than shippers using the all-rail routes, if the relationship prescribed by the Commission goes into effect.

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prejudice, or disadvantage to the traffic of any other carrier of whatever description. Division 2 of the Commission expressed the view that the proviso would relieve the eastern railroads from liability under Section 3 (1) even though it were assumed that undue or unjust prejudice or disadvantage to ex-barge grain would result from the relationship sought to be established by the carriers (246 I. C. C. 363); but Commissioner Eastman pointed out that shippers were entitled to the protection of Section 3 (1) even though the operators of barge lines were not so protected. (248 I. C. C. 323.) However, it seems clear that the proviso was not intended to authorize discrimination against connecting rail and water lines, prohibited by Section 3 (4), which also was amended in 1940 so as to include water carriers within its protection or against shippers, who are protected by Section 2 as well as by Section 3 (1). The legislative history of the Transportation Act of 1940 shows that the proviso was first applied to Section 305 (c) of the Act (49 U. S. C. 905) and that the proviso was proposed in order to preclude a holding by the Commission that the rates of water carriers would constitute unjust discrimination, prejudice, or disadvantage to the traffic of competing carriers, or an unfair or destructive competitive practice within the meaning of Section 1 of the Transportation Act of 1940 (the National Transportation Policy), if such rates were lower than the rates of competing railroads (84 Cong. Rec. 6131, 9862–3). The bill passed the Senate in this form, but the proviso was revised in conference (86 Cong. Rec. 10166) and, as revised, was made applicable also to Section 3 (1) of the Act. Accordingly, the correct interpretation of the proviso is that Section 3 (1) shall not be deemed to have been violated merely because rail rates are higher than the rates of competing water carriers, and the proviso may not become a cover for discrimination against connecting water lines and shippers utilizing the barge-rail routes.

Since the relationship between ex-barge and ex-rail rates which the Commission prescribed was prohibited by the various provisions of the Interstate Commerce Act which have been discussed, the Commission's action assailed in the present suit was vitiated by errors of law and cannot be sustained upon judicial review.

III

THE COMMISSION'S CONCLUSIONS LACK A RATIONAL BASIS

As demonstrated in the foregoing discussion, the Commission's conclusions are vitiated by error of law and misapplication of the statutory standards prescribed by Congress. *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 489. They also lack the requisite "rational basis." *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146. The relationship between ex-barge and ex-rail rates which the Commission prescribed is obviously based upon irrelevant and immaterial findings made by the Commission, whereas no findings of fact which would be adequate to support the prescribed relationship are made in the Commission's report.

Protestants at a previous stage of the controversy regarding grain rates pitched their case upon erroneous claims that the Commission was bound to maintain the status quo by perpetuating the existing rate structure whatever might be its defects. *Interstate Commerce Commission* v.

Inland Waterways Corp., 319 U. S. 671, 684. This Court pointed out that they were not entitled to the "fortuitous" benefits of the existing rate structure, which involved numerous departures from the long and short-haul requirements of Section 4 of the Act. 319 U. S. at 687–8, 691.

The Commission in its report criticized the existing barge-rail combinations upon the ground that they constitute "numerous and extreme departures from the long-and-short-haul provisions of section 4 of the Interstate Commerce Act" (262 I. C. C. 20, R. 24). But the Commission's decision did not rest upon this construction of Section 4. It concluded that under Section 6 (b) of the Transportation Act of 1940, the eastern railroads were relieved from increasing their present proportional rates so as "to bring the barge-rail combinations in harmony with fourth-section principles" (262 I. C. C. 30, R. 34, 35) and that, accordingly, Section 6 (b) of the 1940 Act would also protect the departures of lesser extent that would result from the ex-barge proportional rates prescribed by the Commission. (262 I. C. C. 31, R. 35) Commissioner Alldredge in his dissent also expressed the view that Section 6 (b) of the Transportation Act of 1940 afforded relief from the operation of Section 4 (262 I. C. C. 36, R. 40).

No controversy as to Fourth Section departures is involved on the present appeal. No complaint has been made by shippers at intermediate points,

to protect whom Section 4 was designed. Moreover, the barge-rail rates, considered in and of themselves, comply with Fourth Section principles; and only in comparison with *all-rail* local rates, is there any disparity. Such disadvantage to intermediate inland points not having access to water transportation is due entirely to natural disadvantage of location, and constitutes no reason for depriving shippers more advantageously situated, of the protection afforded by the national transportation policy to the low rates by water transportation.

Furthermore, it has long been established that Fourth Section questions must be determined by comparison of the same kind of rates, and not by comparison of proportional rates with local rates, as here attempted. *Baltimore Chamber of Commerce* v. *Baltimore & Ohio Railroad Company*, 22 I. C. C. 596, 601–2.

On the prior appeal, this Court held that the water carriers and shippers of ex-barge grain were not entitled as a matter of law to application of the existing out-bound proportional rail rates on grain from Chicago to eastern destinations. (319 U. S. 683–4.) This holding was based on the manifest correctness of the proposition that the circumstances and conditions under which the ex-barge and ex-rail grain moved eastward might be entirely different. For example, conceivably it could be made to appear that the eastern railroads

sustain a heavier burden in transporting the ex-barge grain for performing which they would be entitled to receive greater compensation.

This Court rejected the theory that the Commission had approved or prescribed application of the local rates to ex-barge grain out-bound from Chicago. (319 U. S. 686–7.) The opinion stated that, "our decision carries no implication of approval of any rates here involved." (319 U. S. 691.)

Now the Commission has spoken. It has now condemned the use of the local rates which were permissible under the order sustained by this Court. The present case deals with an entirely different subject matter, which was expressly left open in this Court's opinion. (319 U. S. 686–7.) To employ the word repeatedly used in the Commission's report, it has "prescribed" proportional rates for application to ex-barge grain moving out-bound by rail from Chicago and a relationship between those rates and the proportional rates on ex-rail grain. The issue here is whether the Commission's action squares with the applicable law.

We do not here contend that the present ex-rail proportional rates are necessarily the proper rates for application to ex-barge grain traffic. Nor do we contend that ex-barge proportional rates must necessarily be identical with the proportional rates applicable to transportation of ex-rail or ex-lake grain. We recognize that from a theoretical standpoint circumstances might con-

ceivably exist where differences in transportation conditions might warrant a difference in rates. Our contention is that the Commission's findings in this proceeding fail to provide a rational basis for establishing higher proportional rates on ex-barge grain received at Chicago from points on the inland waterways system than the contemporaneous proportional rates on ex-rail grain received at Chicago from the same points on the inland waterways system.

In other words, the real question for determination by the Commission was whether transportation conditions and circumstances involved in the movement of ex-barge grain from Chicago eastward were different from the circumstances and conditions pertaining to the movement of ex-rail grain shipped from that point. In the absence of findings, supported by substantial evidence, disclosing substantial difference between those transportation conditions and circumstances, the relationship prescribed by the Commission is plainly prohibited by law and cannot be justified.

The Commission has failed to make findings with respect to the traffic in controversy, that is to say, traffic from the area where the barge-rail and all-rail routes are competitive.[46] This means the

[46] Division 2 of the Commission defined this competitive area in Illinois. (246 I. C. C. 355–356.) "This corn producing section lies west and southwest of Chicago and is bounded on the north by Herbert and Oregon, Ill.; on the west by Prophetstown and Neponset, Ill.; on the southwest by Cazenovia, Ill.; on the south by Ocoya, Danforth and Pittwood,

area adjacent to the waterways which is now served by both water and rail carriers.

This controversy had its genesis in the effects which flowed from the substantially equal treatment in out-bound proportional rail rates from Chicago accorded ex-barge and ex-rail grain shipped to Chicago from points on or near the waterways where the in-bound water and rail services were competitive. The water rates, which the Commission has found were just and reasonable (262 I. C. C. 19, R. 23), combined with the outbound proportional rail rates resulted in lower through rates to eastern destinations than the combinations made up of the in-bound and outbound proportional rail rates from points served by the in-bound water carriers.

As a result of this advantage in rates, the water carriers captured from the inbound rail lines a substantial portion of the grain traffic; and the farmers served by the barge lines received greater net prices for grain. To assist the inbound railroads in their efforts to recapture

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Ill., and on the east by Schneider and North Hayden, Ind. * * * Much of the 65,774,000 bushels of corn received in Chicago in 1939 by rail, and all of the 13,206,000 bushels received over the Illinois Waterways, originated in this section." As this Court said in *Florida* v. *United States*, 282 U. S. 194, 212, "it must appear that there are findings, supported by evidence, of the essential facts as to the particular traffic * * *". See also *United States* v. *C., M., St. P. & P. R. Co.*, 294 U. S. 499, 506; *North Carolina* v. *United States*, 325 U. S. 507, 520.

this traffic, the eastern railroads attempted to apply the local rates to ex-barge grain outbound from Chicago in lieu of the much lower proportional rates. After further hearing the Commission has condemned this attempt as unlawful because it would destroy the barge-rail traffic. (262 I. C. C. 25, R. 29)

It is clear that the effects of this equal treatment in proportional rates accorded ex-barge and ex-rail grain did not extend beyond the area where the inbound water and rail lines competed for traffic. Although the barge lines made substantial inroads upon the inbound traffic of the railroads serving this area, the water carriers could not compete for traffic with railroads serving only inland points, not accessible to the waterways. Accordingly, the volume of rail traffic from the inland points was not curtailed by the equal treatment given ex-barge and ex-rail grain outbound from Chicago.

Likewise, the equal treatment in proportional rates accorded ex-barge and ex-rail grain outbound from Chicago affected only the net prices received by the farmers and shippers in the area served by the competing inbound water and rail lines. All grain of like kind and grade comes to a common market value at Chicago, regardless of the cost, mode or length of inbound transportation (Fdg. 10, R. 180), and the net prices received by the farmers are determined by deducting from the Chicago price the inbound trucking costs,

freight charges, country elevator margins and other costs and margins peculiar to the inbound mode of transportation utilized by the shipper. (262 I. C. C. 16, 23; R. 20, 27.) Accordingly, the farmers and shippers received greater net prices for grain where the cheaper water service was used to move grain to Chicago. Hence, other costs being equal, any difference between the net prices received by the farmers and shippers served by both water and rail, on the one hand, and those served only by railroad, on the other, was caused by the difference between the inbound water and rail rates, not by the equality in the outbound proportional rates.[47]

Similarly, the effects which would result from the prescribed difference in outbound proportional rates would not extend beyond this competitive area. The volume of grain traffic from this area handled by the inbound water carriers would be curtailed by the higher charges over the barge-rail routes while the volume of grain transported by the inbound rail lines which compete with the barge carriers would be increased; for farmers and shippers would utilize the rail service where the rate advantage of using the barge-rail rates

[47] It may be suggested that the low inbound water rates have increased the quantity of grain received at the market place. Such an increase conceivably could have depressed the common price paid for grain of like kind and grade. But the Commission has not found that any grain moved to Chicago which, except for the low rates, would have been shipped to other markets.

would be overcome by the trucking costs involved in moving grain to the waterways. The volume of grain transported inbound by the railroads from inland points, not accessible to the waterways, would not be changed by the unequal treatment here proposed, for the water carriers cannot compete for this traffic where the outbound rates are equal, and the unequal treatment would only increase this barrier.

The net prices received by farmers and shippers at inland points, served only by railroad, would not be changed, for their outbound rates would not be altered under the Commission's proposal. But the net prices received by the farmers and shippers served by the water carriers would be reduced, for the barge-rail rates would be increased.

Accordingly, determination of whether the prescribed difference in outbound proportional rates would violate Sections 2, 3 (1) or 3 (4) required that the Commission make findings with respect to the traffic shipped to Chicago from the area where the difference in rates would produce changes in the volume of traffic transported by the competing inbound water and rail lines and in the prices received by the farmers and shippers utilizing their facilities. Plainly, a difference in rates can be discriminatory only where it produces injury and, where it produces injury, the different treatment can be justified only by showing that a greater burden is sustained in

transporting the traffic charged the higher rate.

Section 3 (4), which unqualifiedly prohibits discrimination between connecting lines, is clearly designed to protect competing carriers in their struggle for traffic. Injury to connecting carriers from the difference in proportional rates herein prescribed could occur only where the inbound water and rail lines compete for traffic. Hence, with respect to such competitive traffic, Section 3 (4) would prohibit the difference in rates unless it is determined that the eastern railroads assume a greater burden in transporting ex-barge grain than they bear in hauling ex-rail grain shipped to Chicago from this competitive area. "Plainly by these provisions the only difference which carriers can make in the treatment of their connections is such as can be justified by differences in the conditions and circumstances surrounding the service rendered." *Chattanooga Packet Co.* v. *Illinois Central R. Co.*, 33 I. C. C. 384, 391.

The findings made by the Commission are not adequate to support its ultimate decision because they do not deal with this vital, competitive area. After pointing out that proportional rates are in their essence balances of through rates and properly may vary according to the relative length and nature of the inbound and through service, the Commission said:

> Where, as here, ex-rail and ex-lake proportionals or specifics reflect average cir-

> cumstances and conditions surrounding the all-rail and lake-rail transportation which differ from those affecting the barge-rail transportation, we conclude that ex-barge proportionals may properly vary from the ex-rail and ex-lake proportionals or specifics to the extent warranted by such differences. (262 I. C. C. at 27, R. 31, 32.)

Assuming that different rates on ex-barge grain, on the one hand, and ex-rail and ex-lake grain, on the other, may be predicated upon a difference in average circumstances and conditions,[48] it would be true that a relationship recognizing a difference in rates might properly have been prescribed if the Commission had made a valid finding, supported by substantial evidence, disclosing the difference, if any, in transportation conditions and circumstances between the transportation of ex-barge grain and the transportation of ex-rail grain moving from Chicago to the same eastern destinations.[49]

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[48] In *North Carolina* v. *United States*, 325 U. S. 507, 515, this Court stated that carriers must be treated on an individual basis for rate-making purposes, from which it follows that findings with respect to discrimination cannot be based upon proof of average circumstances and conditions.

[49] It is well established that this Court will not make the required determination. "In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body". *Florida* v. *United States*, 282 U. S. 194, 215.

But, as heretofore shown, the Commission made no such finding. The findings upon which the Commission relies[50] deal with irrelevant facts regarding the length and nature of inbound rail hauls on traffic originating at points not having access to transportation via the inland waterways system. Only the area where water carriers utilizing the inland waterways system compete with all-rail routes is pertinent in considering

[50] 262 I. C. C. 28, R. 32. The findings made by the Commission read as follows:

1. On the average, as compared with the ex-barge grain, the movement under the ex-rail proportionals and specifics requires less terminal service at the gateway or junction, less transit service at intermediate points in official territory, and less line-haul service to the southern portion of central territory.

2. The in-bound rail hauls of all of the traffic which engages the ex-rail proportionals are substantially longer, on the average, than the in-bound barge hauls.

3. The rate-making circumstances characteristic of the all-rail traffic, but not of the barge-rail traffic here considered include:

(a) The ex-rail proportionals or specifics, as parts of the through all-rail rates, provide to each destination on all-rail traffic from west of the gateways an average outbound factor which is a component part of many through rates of different amounts, which vary with the length of the in-bound hauls and the western factors applicable thereto.

(b) The ex-rail proportionals or specifics (1) are made subject to a fourth-section rule which in effect provides that to trunk-line and New England territories they shall apply only where the in-bound rate is 8.5 cents or higher, and (2) to all official territory destinations are adjusted to equalize the all-rail rates by the various routes and gateways.

the question whether substantial differences in transportation conditions and circumstances exist between the ex-barge and ex-rail traffic.

The existing ex-rail proportional rates for transportation east of Chicago apply uniformly to grain originating at numerous points throughout a vast territory without regard to either the relative lengths of the inbound hauls or the other circumstances and conditions peculiar to the inbound movements. It may well be that this uniformity is a defect in the existing rate structure, and that the all-rail rates from points within the area competitive with water transportation are not properly related to the all-rail rates from non-competitive points in other parts of the territory whose traffic now moves under the ex-rail proportionals. But the pertinent question with respect to the proper rela-

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(c) The ex-rail proportionals or specifics, combined with the in-bound interstate rates or specifics, result in through all-rail rates to official territory which harmonize with each other and with the local rates in that territory.

4. Lake grain from the Northwest consists chiefly of wheat which has a relatively long water haul in-bound and is usually preceded by an in-bound rail haul. The rail-lake-rail combinations, in general, conform to the principles which underlie section 4. In these respects lake grain is like barge grain from Kansas City but unlike barge grain from Illinois. To trunk-line and New England territories, the lake-rail grain differs from all of the barge-rail grain moving through Chicago in that the lake-rail grain can and generally does by-pass that gateway entirely.

tionship between ex-barge and ex-rail grain is whether substantial differences exist in transportation conditions and circumstances between the barge-rail routes and the all-rail routes from the same points of origin lying within the area where *rail and water transportation are competitive.*

Since the water carriers do not compete for grain traffic shipped from points west of Chicago not accessible to the inland waterways system, the level of rail rates from such points has no bearing whatever upon the relationship between rates outbound from Chicago on ex-barge grain and ex-rail grain shipped from identical origins on the waterways. As all grain of like kind and grade comes to a common market value at Chicago, regardless of the cost, mode or length of inbound transportation,[51] the level of the barge rates on grain has no effect upon the prices paid to inland producers not located within the area where rail and water transportation are competitive. Thus the rail rates from such inland points to Chicago were immaterial to the issue in the proceeding before the Commission.

Likewise, the water carriers do not compete for the transportation of grain shipped from points east of Chicago not accessible to the inland waterways system. This grain usually moves to eastern markets, where it must compete with grains from

[51] Finding 10, R. 180.

Chicago. But even where a farmer ships grain from points east of Chicago by rail to Chicago, he must absorb all handling charges from the prices there received. Accordingly, neither the level of the rail rates from points east of Chicago to Chicago nor the rail rates from such points to more eastward points are material to the determination of whether the relationship between ex-barge and ex-rail proportional rates prescribed by the Commission is discriminatory.

Even if it be true, as the Commission found, that:

> On the average, as compared with the ex-barge grain, the movement under the ex-rail proportionals and specifics requires less terminal service at the gateway or junction, less transit service at intermediate points in official territory, and less line-haul service to the southern portion of central territory. (262 I. C. C. at 28, R. 32.)

this finding may not be lawfully utilized to support the relationship prescribed by the Commission, since it embraced inbound rail movements from points not served by the water carriers. The Commission made no finding whether ex-barge grain required more or less service than ex-rail grain shipped from the same points on the inland waterways system.

Moreover, even if it be assumed that different outbound rates can be predicated on findings of

"average" differences, as here attempted, the Commission failed to find the extent to which the eastern railroads perform less terminal service at Chicago on ex-rail grain than on ex-barge grain. Hence, it is impossible to determine whether any additional service performed justifies the higher rates prescribed for ex-barge grain. Moreover, the insubstantial character of this finding as a basis for higher charges on the ex-barge traffic is shown by the fact that the outbound proportional rates apply to ex-rail grain without regard to whether the all-rail traffic moves directly through Chicago, in which event no terminal service is performed, or whether it stops at that point for marketing or processing, in which event the eastern railroads perform the same terminal service on ex-rail grain as on ex-barge grain. (262 I. C. C. 14, R. 18.) In the case of all-rail traffic, the Commission permitted application of the same outbound proportional rates, regardless of the amount of terminal service performed.

Unlike its finding with respect to the transit privileges included with the inbound rates (262 I. C. C. 14, R. 18), the Commission failed to find that the outbound rates included any transit privilege. Accordingly, the significance of this finding with respect to transit is not apparent, for carriers usually exact an additional charge for performing transit service. See *Central Railroad Company of New Jersey* v. *United States*, 257

U. S. 247. In this event it makes no difference whether more transit is accorded on ex-barge grain than on ex-rail or ex-lake grain, for the additional transit charge fully compensates the carrier and whether there is a difference between the transit accorded on ex-barge and ex-rail traffic has no bearing upon the level of the line-haul rates.

It may well also be a fact that:

> The in-bound rail hauls of all of the traffic which engages the ex-rail proportionals are substantially longer, on the average, than the in-bound barge hauls. (262 I. C. C. at 28, R. 32.)

Utilization of this average fails to disclose the lengths of the inbound barge and rail hauls from points on the inland waterways system. It is apparent, however, that the inbound barge and rail hauls from the same point on the inland waterways system to Chicago would automatically, as a rule, be substantially equal in length for rate-making purposes.[52]

Moreover, the arbitrary nature of this finding as a basis for higher charges on ex-barge grain is

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[52] The general rule of rate-making is that rates are relatively lower for longer distances. The Commission found (262 I. C. C. 21, R. 25) that "In-bound to Chicago, as compared with the direct rail-hauls, the barge-hauls are slightly longer from the Illinois origins and substantially longer from Kansas City." But the Commission did not regard the difference in distances from Kansas City and Illinois origins as significant, and prescribed a uniform proportional rate for all ex-barge traffic. (262 I. C. C. 31, R. 35.)

shown by the fact that the outbound proportional rail rates apply to ex-rail grain "so far as practicable at a uniform figure regardless of origin" (262 I. C. C. 17, 38–9; R. 21, 43).

Similarly the other findings made by the Commission with respect to the "rate-making circumstances characteristic of the all-rail traffic, but not of the barge-rail traffic" (262 I. C. C. at 28, R. 32), deal with factors which may properly affect the level of ex-rail proportional rates from Chicago to eastern destinations, but which have no pertinence as a justification of proportional rail rates on ex-barge grain higher than the rates on ex-rail moving from the same points on the inland waterways system.

None of the findings made by the Commission does more than give rise to a possible inference that the present ex-rail proportional rates may not be proper rates for application to ex-barge traffic. The findings do not in any respect show that a discriminatory relationship between ex-barge rates and ex-rail rates on grain shipped from the same points within the area where water and rail transportation are competitive would be justified as reasonable or otherwise lawful. As Commissioner Alldredge makes plain in his dissent, there is no logical relation between cause and effect in the Commission's decision. Commissioner Alldredge said:

> This proceeding was started by action of the eastern rail lines in an attempt to restrict their tariffs so that the east-bound

proportional rates published therein on grain and grain products from Chicago would not in the future apply on such traffic when it originates along the Illinois Waterway and is brought into Chicago by barge or boat. The railroads acted in this matter entirely in their own interest. There was no shipper demand, so far as the record discloses, for any change in the proportional rates applicable on this ex-river traffic. The boat and barge competition on the Illinois Waterway, however, is the exclusive concern of the western rail lines terminating in Chicago. They are the only railroads that are competitive with boats and barges operating on this waterway. The railroads running east of Chicago, insofar as the movement of this particular traffic to its ultimate market is concerned, offer a supplementary service to the water lines as well as to the western railroads. They obtain the same rates and revenues irrespective of whether these commodities are delivered to them at Chicago by the western railroads or by boats and barges on the Illinois Waterway. If any railroads, therefore, are actually suffering from the competition of the boats and barges on this waterway, it is the western and not the eastern railroads. Any need for revising the existing rates in issue here, if any such need exists, would spring from this one particular circumstance. In endeavoring to compose this situation, however, under

the principles announced by the Supreme Court of the United States in *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671, the majority has decided to increase the rates and revenues of the rail lines extending east from Chicago, even as far as New England—a wholly different set of carriers from those which feel the effects of the waterway competition. There is, therefore, no logical relation between cause and effect in the majority decision. The only real solution of the problem, if any solution is called for, is to establish minimum rates for the boats and barges operating on the Illinois Waterway so as to protect the western rail lines against the competition thus created. These western railroads, however, have not made out such a case on this record. The boat lines are apparently prospering under the rates which they are now charging, and there seems to be no reason for putting a floor under those rates. (262 I. C. C. 34–5, R. 38–39).

The arbitrary character of the relationship prescribed by the Commission between ex-barge and ex-rail rates is further demonstrated by the fact that the standards here used to justify higher rates on ex-barge grain could with equal force be used to justify different rates on ex-rail grain transported to Chicago by competing railroads from the same points west of Chicago.

In fact, the Commission's report shows that where the outbound proportional rates to points

east of Chicago vary [33] according to the points west of Chicago from which grain is shipped to Chicago, the eastern railroads accord equal treatment to inbound rail lines which compete for traffic, in strict conformity with Section 3 (4). (Appendix A, Table II, 262 I. C. C. 39, R. 43.) Unequal treatment of competing connecting rail carriers plainly would be unlawful and discriminatory under Section 3 (4). Indeed the Commission itself in many cases [34] has expressed its understanding of the issues involved in the present proceeding in forceful language applicable here.

Reduced to its essence, the Commission's finding in this proceeding that the existing relationship

[33] Such variance in the outbound proportional all-rail rates is perhaps contrary to Sections 2 and 3 (1) of the Act. However, it is possible that this difference in rates could be justified under Sections 2 and 3 (1) as between all-rail shippers, for under those provisions of the Act, a difference in rates is unlawful only where it is "unjust," "undue," or "unreasonable." Assuming that this difference in rates is lawful on the all-rail traffic under Sections 2 and 3 (1), it does not follow that the Commission has the power to determine that the prescribed relationship in rates would not be discriminatory between the barge-rail and all-rail shippers under Sections 2 and 3 (1), for the national transportation policy provides that the Interstate Commerce Act "shall be administered and enforced" so as to recognize and preserve the inherent advantages of each mode of transportation which, as to water carriers, means their low rates. Accordingly, the Commission's power to determine whether the prescribed difference in rates would be "unjust," "undue," or "unreasonable" must be deemed to have been curtailed by adoption of the policy.

[34] Cited in 262 I. C. C. at 26, R. 30.

of equality between barge-rail and all-rail rates is an "inequitable situation" really means nothing more than that it is inequitable for farmers located on or near the waterways to receive greater net prices for their grain than do farmers at inland points who do not enjoy the inherent advantage of low cost water transportation. Congress, in directing the Commission to preserve the inherent advantages of water transportation, has taken a contrary view.

A fatal defect in the conclusions and findings of the Commission is that they disclose an attempt by it to accommodate the lower barge factors of the barge-rail rates to the existing all-rail rate structure so that the lower barge factors will not disrupt the all-rail rate structure on grain. Here the Commission fell into error. It encountered not only the positive prohibitions of the Interstate Commerce Act but also a mandate from Congress to adjust rate structures so that the lower rates of the water carriers, an inherent advantage of water transportation, will be fully reflected in all cases.

A heavy overtone of concern over the disruptive effect of the lower water rates upon the rail grain rate structure runs through the Commission's report. To protect that structure, it chooses to accommodate the water rates to the rail structure so as to bring the water-rail charges in substantial equality with the all-rail rates.

Although appellees do not contend that ex-barge grain is entitled as a matter of law to the benefits of the outbound rail rates, the Commission seizes upon this Court's statement that the water carriers and shippers over the water-rail routes are not entitled to the "fortuitous * * * benefits of the existing rate structure" in support of the prescribed relationship in outbound rates.

But in so doing the Commission has ignored the equally "fortuitous" fact that in certain localities natural waterways are available for barge transportation, the inherent advantages of which under the law, must be fostered and protected. It has disregarded the fact that the water competition extends only to the rail lines which directly compete with the water carriers and that only the rates of the competing inbound water and rail lines need be adjusted in order to accommodate this competition to the rate structure.

Assuming, as the Commission found, that the inbound barge rates are just and reasonable, the proper remedy, if one is needed, is to leave the railroads free, subject only to the restrictions imposed upon them by the Act, to meet the competition of the water carriers by reducing their own rates. Adoption of such a procedure would carry out fully the congressional mandate.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

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APPENDIX

The pertinent provisions of the Interstate Commerce Act are as follows:

[Applicable to all parts]

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy. (Section 1, Act of September 18, 1940, c. 722, 54

Stat. 898, 899; 49 U. S. C., notes preceding §§ 1, 301 and 901.)

Section 1, Paragraph (5) (a) of Part I of the Interstate Commerce Act:

> (5) (a) All charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. (49 U. S. C. 1 (5) (a)).

Section 2 of Part I of the Interstate Commerce Act:

> Sec. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transporfation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (49 U. S. C. 2.)

Section 3, Paragraph (1) of Part I of the Interstate Commerce Act:

> (1) It shall be unlawful for any common carrier subject to the provisions of this part

to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description. (49 U. S. C. 3 (1))

Section 3, Paragraph (4) of Part I of the Interstate Commerce Act:

(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III. (49 U. S. C. 3 (4))

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